In The
Supreme Court of the United States
OCTOBER TERM, 1973

JAN 26
MICHAEL RODAK, J

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The Temporary Restraining Order issued by the Circuit Court of the Fourth Judicial Circuit in and for Duval County,

Florida is not reported. P.App.1a; A. 37.[1/] The Opinion and Order of the District Court of Appeal, First District, State of Florida, denying the Respondent-Union's Suggestion for Writ of Prohibition is reported at 248 So.2d 179, 78 LRRM 2208. P.App.3a. The Opinion of the Supreme Court of Florida is reported at 279 So.2d 300, 83 LRRM 2033, P.App.8a.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on April 18, 1973. A timely Petition for Rehearing was denied by the Supreme Court of Florida on July 20, 1973. A. 47; P. App.15a. The Petition for Writ of Certiorari was filed with this Court on September 11, 1973, and was granted on December 3, 1973. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1257(3), 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

Article VI, Clause 2, U. S. Constitution:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

1. The opinions and orders of the District Court of Appeal, First District, State of Florida, and the Supreme Court of Florida are printed as appendixes to the Petition for Writ of Certiorari. These opinions and orders have not been separately reprinted in the Appendix, filed pursuant to Supreme Court Rule 36. References to the opinions and orders of the courts below will be designated as "P.App. (with page number following)." The designation "A. (with page number following)" will be made when referring to the printed Appendix filed pursuant to Supreme Court Rule 36.

of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary, notwithstanding."

STATUTES INVOLVED

1. Section 203(d) of the National Labor Relations Act, as amended, 29 U.S.C. §173(d):

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. The Service (Federal Mediation and Conciliation Service) is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

2. Section 301(a) of the National Labor Relations Act as amended, 29 U.S.C. §185(a):

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

QUESTION PRESENTED FOR REVIEW

Whether the state courts have jurisdiction to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach also arguably involves an unfair labor practice.

STATEMENT OF THE CASE

Petitioner, William E. Arnold Company (hereinafter referred to as Arnold), is a general contractor with its principal place of business located in Jacksonville, Florida. When the work stoppage at issue arose, Arnold was in the process of constructing the Jacksonville General Hospital in Jacksonville, Florida, at a cost of 2.3 million dollars.[2/] A.12-13; 15.

Arnold is a member of the Associated General Contractors of America, Northeastern Florida Chapter (AGC). For many years, Arnold has had a collective bargaining agreement with the Respondents, Carpenters District Council of Jacksonville and Vicinity and its local affiliates (hereinafter referred to as the "Carpenters Union" or the "union"). At all times material to the action of the trial court below, a collective bargaining agreement was in effect between Arnold and the Carpenters Union. The collective bargaining agreement was

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2. Although there was no transcript of the evidence presented before the trial court in support of Arnold's application for Temporary Restraining Order, there is no dispute between the parties that the work stoppage involved a grievance over a jurisdictional work assignment and that the dispute underlying the work stoppage was expressly subject to a no-strike clause coupled with grievance-arbitration procedures under the collective bargaining agreement between the parties. The trial court found from the evidence presented that Arnold would suffer irreparable harm unless the Temporary Restraining Order was granted. All of the opinions and orders of the courts below recognized the above undisputed factors. See P.App.1a through 14a.

negotiated through the local AGC Chapter. A.14,19; R.Vol.II, Part XII. Article VI of the collective bargaining agreement contained a no-strike provision which reads as follows:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." A.21-22. (See attachments to union's Suggestion for Writ of Prohibition, R.Vol.I, Part VI.)

One of Arnold's subcontractors on the Jacksonville General Hospital job had a collective bargaining agreement with the Wood Wire and Metal Lathers International Union, AFL-CIO, Local 59. Pursuant to that agreement, the subcontractor awarded certain work to the Lathers Union. The assignment of this work by the subcontractor to the Lathers Union gave rise to a dispute between the Lathers Union and the Carpenters Union members who were employed by Arnold. A. 15-16. On April 21, 1971, the Carpenters Union members employed by Arnold instituted a strike against Arnold in order to force a change in the work assignment made by Arnold's subcontractor to the Lathers Union members.[3/]

After the strike had begun, Arnold filed a Complaint on April 23, 1971, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, seeking an injunc-

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3. The nature of the dispute underlying the strike was admitted by the Carpenters Union in its brief on the merits filed with the Supreme Court of Florida (R.Vol.I, Part III) and in its Suggestion for Writ of Prohibition originally filed with the Florida District Court of Appeal. A.3-5, 8-11.

tion prohibiting the Carpenters Union from violating the no-strike promise contained in Article VI of the collective bargaining agreement entered into between the parties. A.12. Telephonic notice of hearing was given to the parties prior to the evidentiary hearing conducted before the Duval County Circuit Court. A.10,37. At the hearing on Arnold's Application for Temporary Restraining Order, counsel for the union moved to dismiss the Complaint on the grounds, *inter alia*, that the court's jurisdiction to adjudicate the breach of the collective bargaining agreement was preempted by federal law. A.8-11. On April 23, 1971, the Honorable Roger J. Waybright, Circuit Judge in and for Duval County, Florida, issued a Temporary Restraining Order prohibiting further breaches of the no-strike promise contained in the collective bargaining agreement. A.37; P.App.1a. The Carpenters Union thereafter filed a Suggestion for Writ of Prohibition with the District Court of Appeal, First District, State of Florida. In its Suggestion for Writ of Prohibition, the union alleged that since the no-strike contract violation was also an unfair labor practice under Section 8(b)(4)(D) of the National Labor Relations Act, the state courts had been preempted of jurisdiction to remedy the contract breach. A. 8-11.

The Florida District Court of Appeal denied the union's Suggestion for Writ of Prohibition. 248 So.2d 179; P.App.3a. In denying the union's Suggestion for Writ of Prohibition, the Florida District Court of Appeal reasoned that under the authority of *Boys Markets v. Retail Clerks*, 398 U.S. 235, 74 LRRM 2257 (1970), and *RCA v. IATSE, Local 780*, 160 So. 2d 150, 55 LRRM 2478 (2nd DCA Fla.1964), *cert. denied* 169 So.2d 390 (Fla. 1964); *cert. denied* 380 U.S. 973 (1965), the state courts were not preempted of their jurisdiction to enforce a no-strike clause in a collective bargaining agreement

even where the contract breach was arguably an unfair labor practice. 248 So.2d at 180-81; P.App.3a, 6a-8a.

The union then filed a Petition for Writ of Certiorari with the Supreme Court of Florida. A. 3-5. Certiorari was granted and the Supreme Court of Florida entered its opinion and judgment on April 18, 1973, vacating the decision of the Florida District Court of Appeal. A.7; 279 So.2d 300; P.App. 8a-13a. In its majority opinion, the Supreme Court of Florida held that since the union's contract breach arguably involved an unfair labor practice, the National Labor Relations Board had exclusive jurisdiction. In concluding that the state courts had been preempted of their jurisdiction to enjoin the contract breach, the Supreme Court of Florida found that:

> "The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a contract breach." P.App.11a.

In a dissenting opinion, concurred in by Justice Drew, Justice Dekle found that, since the parties had expressly agreed to a no-strike clause and to arbitrate the dispute underlying the strike, the state courts had not been preempted of their jurisdiction to enforce the contractual intent of the parties. Justice Dekle also found that the majority opinion of the Supreme Court of Florida was in direct conflict with the National Labor Relations Board's decision in *Laborers Local 423 and V&C Brickcleaning Company*, 199 NLRB No. 48, 81 LRRM 1300 (1972). Justice Dekle further reasoned that both parties should honor their contract commitments and that:

> ". . . To do otherwise is to encourage needless and protracted litigation. To avoid such litigation and ensuing delay is the purpose of arbitration and such con-

> tract provisions, to help unclog the busy courts and boards of this teeming land."
> 279 So.2d at 303; P.App.14a.

Arnold, thereafter, timely filed a Petition for Rehearing with the Supreme Court of Florida. The Petition alleged that the court below apparently overlooked or failed to consider prior decisions of both this Court and the National Labor Relations Board which had expressly rejected the claim of preemption where a contract breach also arguably involved an unfair labor practice. See *Smith v. Evening News Association*, 371 U.S. 195, 51 LRRM 2646 (1962); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). A. 47-49. Various local chapters of the Associated General Contractors of America, the Florida State Chamber of Commerce, and numerous other employers having collective bargaining agreements in the State of Florida, filed amicus curiae briefs in support of the Petition for Rehearing. R. Vol. II, Parts XII, XIII, XIV, XV, XVI, XVII, XVIII. On July 20, 1973, in a 4 to 3 decision, the Supreme Court of Florida denied the Petition for Rehearing. P.App.15a.

On September 11, 1973, Arnold filed a Petition for Writ of Certiorari with this Court seeking review of the Supreme Court of Florida's decision. The Petition was granted on December 3, 1973.

ARGUMENT

INTRODUCTION

The decision of the court below is in direct conflict with prior pronouncements of this Court and presents questions of critical importance regarding the viability of our national labor policy. Compulsory arbitration, without resort to strike, over jurisdictional work assignment disputes is no longer a viable option under the Supreme Court of Florida's decision in this case. The devastating effects of this ruling on the construction industry are obvious. Jurisdictional disputes are common occurrences in the construction industry. For many years construction contractors and construction trades unions have voluntarily agreed to submit jurisdictional disputes for final and binding arbitration to the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry. But even more serious than the catastrophic effects to construction industry employers and unions is the rationale of the ruling below that *no* breach of a collective bargaining agreement which arguably involves an unfair labor practice can be remedied in the state courts. This ruling undermines the entire structure of our national labor policy which encourages peaceful enforcement of voluntarily agreed upon grievance-arbitration processes.

Specifically at issue is the question of whether or not the state courts of Florida lack jurisdiction to enforce no-strike promises in collective bargaining agreements where the dispute underlying the strike is also arguably an unfair labor practice under the National Labor Relations Act. If the collective bargaining process is to survive, then the peaceful resolution of industrial disputes through the grievance-arbitration procedure must be recognized as the very heart of

the collective bargaining process. The ability of the grievance-arbitration adjustment procedure to pump life into the collective bargaining system has been struck a deadly blow by the decision of the court below.

The primary purpose of the National Labor Relations Act is to set up the legal framework which will promote collective bargaining and make the collective bargaining process work. As will be demonstrated below, the decision of the Supreme Court of Florida flies in the face of national labor policy by: 1) undercutting freedom to negotiate substantive terms of collective bargaining agreements; 2) destroying mutual reliance between employers and unions that each will abide by his respective contract commitments; 3) making the grievance-arbitration process meaningless and ineffectual; 4) destroying the law force necessary to insure that the responsibilities undertaken in the collective bargaining process will be carried out; and 5) failing to recognize that injunctive relief is absolutely essential to enforce no-strike commitments.

I. THE STATE COURTS HAVE JURISDICTION TO ENJOIN THE BREACH OF A NO-STRIKE CLAUSE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT EVEN THOUGH THE CONTRACT BREACH ARGUABLY INVOLVES AN UNFAIR LABOR PRACTICE.

A. THE SUPREME COURT OF FLORIDA ERRED IN HOLDING THAT THE STATE COURTS ARE PREEMPTED FROM THEIR JURISDICTION TO ENJOIN VIOLATIONS OF NO-STRIKE AGREEMENTS WHERE THE BREACH OF THE COLLECTIVE BARGAINING AGREEMENT IS ALSO ARGUABLY AN UNFAIR LABOR PRACTICE.

The court below was faced with the question of whether a state court loses its jurisdiction to enforce a collective bargaining agreement where the alleged breach of the agreement also involves an unfair labor practice. This same basic issue has previously been posed before this Court on at least two different occasions. See *Carey v. Westinghouse Electric Corporation*, 375 U.S. 261, 55 LRRM 2042 (1964); *Smith v. Evening News Association*, 371 U.S. 195, 51 LRRM 2646 (1962). In *Carey v. Westinghouse Electric Corporation, supra*, a work assignment dispute arose between the IUE Union, which represented the "production and maintenance workers" of Westinghouse Electric, and the Federation Union, which represented "all salaried and technical employees" of Westinghouse. IUE and Westinghouse were operating under a collective bargaining agreement which contained a grievance-arbitration procedure to resolve "disputes concerning the interpretation, application or claimed violations of the agreement." IUE filed a grievance claiming that certain Federation employees in the engineering laboratory were perform-

ing "production and maintenance work." Westinghouse refused to arbitrate and IUE thereafter filed a suit in the New York state court seeking an order compelling arbitration. Westinghouse's contention that the controversy involved a question of representation for the National Labor Relations Board was upheld in the New York state courts which refused to order arbitration of the work assignment dispute. The New York Court of Appeals reasoned that the subject matter of the grievance was within the exclusive jurisdiction of the NLRB since it involved a question of representation. 11 N.Y.2d 452, 230 N.Y.S.2d 703, 50 LRRM 2740 (N.Y.App. 1962).

On certiorari review, this Court reversed the holding of the New York Court of Appeals and held that the state courts were *not* preempted of their jurisdiction to compel arbitration of IUE's work assignment dispute. *Carey v. Westinghouse Electric Corporation*, 375 U.S. 261. The Court found that the work assignment dispute could arguably be characterized as either 1) a controversy as to whether certain work should be performed by the IUE bargaining unit or the Federation bargaining unit; or 2) a dispute as to which union should represent the employees doing the disputed work. The Court reasoned that whether the dispute were viewed as a "jurisdictional dispute" or a question of "representation," a remedy existed before the NLRB.[4/] In holding that the existence of a remedy before the NLRB did not oust state courts of their jurisdiction to order arbitration, the Court emphasized the Congressional policy favoring voluntary settlement of work assignment disputes found in Section 10(k) of the Act:

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4. See §§8(b)(4)(D) and 10(k) of the Act covering jurisdictional disputes and §§8(a)(5) and 9(c)(1) covering the duty to bargain and representation questions, respectively.

> "Since §10(k) not only tolerates but encourages voluntary settlement of work assignment controversies between unions, we conclude that grievance procedures pursued to arbitration further the policies of the Act." 375 U.S. at 266.

Carey v. Westinghouse Electric Corporation, supra, is so closely analogous to the facts in the case at bar that any distinguishing factors appear to be more nice than obvious. In the case *sub judice,* as was true in *Carey v. Westinghouse,* there was a work assignment dispute between two unions. In both cases, one of the parties sought to avoid its contract commitment to arbitrate the dispute by contending that the state courts were preempted from exercising jurisdiction to enforce the intent of the parties. In *Carey v. Westinghouse,* the state court action was filed to compel arbitration of the work assignment dispute. In the case at bar, the employer sought to enjoin the breach of an express no-strike agreement, coupled with mandatory grievance-arbitration procedures contained in the collective bargaining agreement between the parties. A.12,14-17. If there is any real difference between the case *sub judice* and *Carey v. Westinghouse Electric Corporation,* that difference can accurately be described as two different sides of the same coin. The grievance-arbitration process is the *quid pro quo* in the collective bargaining process for the union's no-strike promise. *Textile Workers v. Lincoln Mills,* 353 U.S. 448, 40 LRRM 2113 (1957).

This Court's decision in *Carey v. Westinghouse Electric Corporation* consistently reflected the previous pronouncement of the Court made in *Smith v. Evening News Association, supra.* In *Smith v. Evening News,* an employee

brought suit in the Michigan state courts seeking to recover damages for the breach of a collective bargaining agreement allegedly committed by the employer. The Supreme Court of Michigan affirmed the Michigan trial court's dismissal of the action, holding that the contract breach was within the exclusive jurisdiction of the National Labor Relations Board because the contract breach also involved an unfair labor practice. *Smith v. Evening News Association*, 106 N.W.2d 785, 362 Mich. 350 (Mich.1961). The decision of the Supreme Court of Michigan in *Smith v. Evening News* was reversed by this Court, which held that the suit filed in the Michigan trial court actually arose under Section 301 of the Act and that the jurisdiction of the state courts to enforce the breach of the collective bargaining agreement was not preempted by the NLRB. 371 U.S. 195. In so holding, this Court in the *Smith* case stated:

> "The authority of the Board [NLRB] to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301." 371 U.S. at 197.

In direct contradiction of the above holdings of this Court in *Smith v. Evening News Association, supra*, and *Carey v. Westinghouse Electric Corporation, supra*, the Supreme Court of Florida held in the case *sub judice* that state court jurisdiction to enforce a collective bargaining agreement *is* preempted by the NLRB where federally prohibited practices are involved. The court below reasoned that:

> "*. . . The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.*" (Emphasis supplied.) 379 So.2d at 302, P.App.11a.

The court below also premised its holding on a prior decision of the Supreme Court of Florida rendered in *Sheetmetal Workers' International Association v. Florida Heat and Power, Inc.*, 230 So.2d 154, 73 LRRM 2239 (Fla.1970). Although the Florida Supreme Court's decision in *Sheetmetal Workers', supra*, did not involve an attempt to enjoin a strike which was in breach of a collective bargaining agreement, the Supreme Court of Florida erroneously reasoned that:

> ". . . In Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla.App.2d, 1964), relied on by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract. In Boys Market v. Retail Clerks Union, 398 U.S. 235 (1970), also cited by the District Court [Florida], there was likewise no unfair labor practice involved. *It is these cases which should have been distinguished from the case at bar*, not *Sheetmetal Workers'. The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.*" (Emphasis added.) 279 So.2d at 302; P.App.10a-11a.

In rendering its decision, the Supreme Court of Florida failed to meet its duty to apply federal substantive law in suits brought under Section 301 of the Act. Instead the court below applied its own notion of the federal preemption doctrine erroneously set forth in *Sheetmetal Workers', supra*.[5]

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5. In *Sheetmetal Workers'* the Florida Supreme Court erroneously concluded that any labor dispute that involved arguably protected or arguably prohibited activities under the NLRA was preempted from state jurisdiction by federal law unless violence or an affront to the state right to work law was involved. See 279 So.2d at 301. The erroneous notion of federal preemption in that decision spawned the patently erroneous result in the case at bar.

It is well settled that both the state and federal courts have jurisdiction over actiions to enforce collective bargaining agreements. See *e.g. Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 49 LRRM 2619 (1962). In such cases, state law may be applied only to the extent that it is compatible with the purposes of Section 301(a) of the Act and where state law is applied, it iis absorbed into federal law. See *Textile Workers Union v. Lincoln Mills, supra.* In essence, state courts enforcing collective bargaining agreements must apply federal substantive law under Section 301 of the Act. *Textile Workers Union v. Lincoln Mills, supra; Charles Dowd Box Company v. Courtmey, supra; Teamsters Local 174 v. Lucas Flour Company*, 369 U.S. 95, 49 LRRM 2717 (1962). The federal substantive labor law controlling here was clearly delineated by this Court in *Carey v. Westinghouse Electric Corporation, supra*, and *Smith v. Evening News Association, supra.* That Federal substantive labor law is "the supreme law of the land" and was undermined by the decision of the court below. U.S. Const., Article VI, Clause 2.

B. THE DECISION BELOW UNDERMINES THE ENTIRE FRAMEWORK OF THE COLLECTIVE BARGAINING PROCESS.

The Supreme Court of Florida's decision renders unenforceable certain collective bargaining contract promises. If the breach of a collective bargaining agreement also happens to be an unfair labor practice, the Supreme Court of Florida would deny the non-breaching party any remedy to enforce the contract promise in the state court system. The court below has thus placed its imprimatur on industrial strife as a substitute for peaceful resolution of industrial disputes.

The primary purpose of the National Labor Relations Act is to set up the legal framework which will promote collective bargaining and thus promote industrial peace. See Section 1 of the Act, 29 USC §151. Even a cursory review of the Act reveals that there are four major conditions precedent to the achievement of industrial peace through the collective bargaining process. First, Congress recognized that both employers and unions must have freedom to negotiate the substantive terms of their collective bargaining agreements. Section 8(d) of the Act, 29 USC §158(d). Secondly, an economy based upon contractual commitments must be imbued with mutual reliance on reciprocal promises. Both employers and unions should *expect* that each party will abide by his respective contract commitments. Thirdly, Congress recognized that industrial controversies could best be resolved through a voluntarily agreed upon grievance-arbitration process. Sections 201, 203 and 204 of the Act, 29 USC §§171, 173, 174. Finally, Congress put teeth in the national labor policy by providing the law force necessary to *insure* that responsibilities undertaken in the collective bargaining process would be carried out. Sections 8(a)(5), 8(b)(3), and 301 of the Act; 29 USC §§158(a)(5), 158 (b)(3), 185.

As will be demonstrated *infra*, the decision of the court below can only serve to undermine the collective bargaining process and generate industrial strife.

1. *Freedom to Negotiate the Substantive Terms of Collective Bargaining Agreements.*

This Court has long recognized, in carrying out the expressed intent of Congress, that employers and unions should have broad latitude in negotiating the terms of their collective bargaining agreements. See *e.g. NLRB v. Jones & Laughlin*

Steel Corp., 301 U.S. 1, 45, 1 LRRM 703 (1937). The Court, in accord with Section 8(d) of the Act, has consistently held that neither the NLRB nor the courts have the power to dictate the substantive terms of collective bargaining agreements. *E.g. NLRB v. Burns International Security Services*, 406 U.S. 272, 80 LRRM 2225 (1972); *H. K. Porter Company, Inc. v. NLRB*, 397 U.S. 99, 102, 73 LRRM 2561 (1970); *Teamsters v. Oliver*, 358 U.S. 283, 43 LRRM 2374 (1959); *NLRB v. American Nat'l. Ins. Co.*, 343 U.S. 395, 30 LRRM 2147 (1952).

An effect of the decision below is to take away the freedom to bargain for a grievance-arbitration process to resolve jurisdictional disputes or any other contract dispute which might arguably involve an unfair labor practice. If a promise not to strike is not enforceable through the courts, the grievance-arbitration process will soon lapse into non-use.[6/] See *Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235, 248 (1970).

2. *Mutual Reliance on Reciprocal Promises Contained in the Collective Bargaining Agreement.*

The mutual exchange of promises involved in the collective bargaining process is the initial lubricant that makes the collective bargaining machinery work. A no-strike promise on the part of the union is the *quid pro quo* for the grievance-arbitration machinery in the collective bargaining system. *Textile Workers v. Lincoln Mills, supra.* In the court's opinion below, the no-strike promise, which lies at the very heart of

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6. The construction industry and the various AFL-CIO construction trades unions have recognized for many years the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry, as the final arbiter of work assignment disputes. The National Joint Board was first established in 1948. A.22; 21 LRRM 16, 44,50-52.

industrial peace, is rendered meaningless and unenforceable in the Florida state courts. If a no-strike agreement is unenforceable, then the employer has failed to receive the consideration bargained for in exchange for the grievance-arbitration process. The intent of the parties to the collective bargaining agreement is thus frustrated and mutual reliance is thereby destroyed. A system which lacks mutual reliance and the respect of its participants cannot long survive. In *Boys Markets, supra*, the Court pointed out the "devastating implications for the enforceability of arbitration agreements" that would result from denial of injunctive relief for breaches of no-strike obligations:

> "[A] no-strike obligation, express or implied is the *quid pro quo* for an undertaking by the employer to submit grievance disputes to the process of arbitration. . . . Any incentive for employers to enter into such an agreement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." 398 U.S. at 248.

3. *The National Labor Policy is Premised Upon the Assumption that the Key to Industrial Peace is the Grievance-Arbitration Process Voluntarily Agreed to by the Parties in Their Collective Bargaining Agreement.*

By enacting Section 203(d) of the Act, Congress expressly recognized that a voluntarily agreed upon grievance-arbitration process was *the* preferred method for peacefully settling industrial disputes. Section 203(d) of the Act provides in part that:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the applica-

tion of an existing collective-bargaining agreement. . . ."

In the case at bar, the parties have expressly agreed in their collective bargaining agreement that jurisdictional disputes are to be settled peacefully and without resort to strike. A. 21-22. The method preferred by our national labor policy has been undercut by the decision of the court below.

In fostering the Congressional policy contained in Section 203(d) of the Act, this Court has long recognized that industrial stability is best effectuated by the substitution of arbitration for industrial strife. See *e.g. Textile Workers v. Lincoln Mills, supra; United Steelworkers of America v. American Manufacturing Company,* 363 U.S. 564, 46 LRRM 2414 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Company,* 363 U.S. 574, 46 LRRM 2416 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corporation,* 363 U.S. 593, 46 LRRM 2423 (1960). In *Steelworkers v. Warrior & Gulf, supra,* this Court expressly acknowledged that our national labor policy could best be effectuated under a collective bargaining agreement containing *both* an arbitration provision for all unresolved grievances *and* an absolute prohibition of strikes. 363 U.S. at 578, f.n. 4. The collective bargaining agreement in the case *sub judice* contains the very same contractual provisions which this Court found would best achieve the federal labor policy. Article VI of the collective bargaining agreement provides in part that:

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of

> Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." A. 21-22.

The Supreme Court of Florida's decision that a no-strike promise is unenforceable, even where a grievance-arbitration procedure was received in exchange, is patently untenable. See *Southwestern Bell Telephone Corporation v. CWA*, 343 F.Supp. 1165, 80 LRRM 2513 (S.D. Tex.1972). The necessary effect of this ruling is to relegate all work assignment disputes, and any other contract dispute which arguably involves an unfair labor practice, beyond the reach of arbitrators or courts. This ruling will have particularly devastating effects upon the construction industry where jurisdictional disputes are common occurrences. The decision below opens Pandora's box to rampant wildcat strikes and chaos in the construction industry.

4. *Section 301 of the Act Provides the Ultimate Sanction to Make the Collective Bargaining Process Work.*

When Congress initially set up the basic legal framework for the collective bargaining process, it soon discovered that legal sanctions to enforce contract commitments were essential to promote our national labor policy. In enacting Section 301 of the Act,[7/] Congress did more than confer jurisdiction in the federal courts over labor organizations. It expressed a national policy that collective bargaining agreements should

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7. The Labor Management Relations Act as an amendment to the initial labor policy formulated in the National Labor Relations Act [Wagner Act]. The legislative history of §301 is unequivocal—"Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong., 1st Sess.p.42.

be enforced by the courts on behalf of or against labor organizations. *Textile Workers v. Lincoln Mills, supra.* Court enforcement of the grievance-arbitration machinery promotes industrial peace by making both parties assume a higher degree of responsibility to live up to their contract commitments. *Steelworkers v. Warrior & Gulf, supra; Textile Workers v. Lincoln Mills, supra.*

The National Labor Relations Board has expressly recognized that it has *concurrent* jurisdiction with the courts over actions which are both a contract breach and also arguably an unfair labor practice. *Laborers Local 423 and V&C Brick-cleaning Co.*, 199 NLRB No. 48, 81 LRRM 1300 (1972); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). The Board's decision in *Laborers Local 423, supra,* involved a jurisdictional work assignment dispute in which the two contending unions had expressly agreed to submit such disputes to the National Joint Board for the Settlement of Jurisdictional Disputes, Building and Construction Industry. In that case, the Board initially deferred its jurisdiction over the work assignment dispute because the parties had agreed upon a voluntary method of adjustment.

> "If we [NLRB] retained jurisdiction in this case, the statutory purpose to encourage the voluntary settlement of jurisdictional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into non-compliance, and then come before this Board for a more favorable resolution to the dispute." 81 LRRM at 1301.

This NLRB policy of deferring jurisdiction is consistent with the national labor policy initially established by Congress in

Section 203(d) of the Act and long since recognized by this Court. See *e.g. Carey v. Westinghouse Electric Corporation, supra; Smith v. Evening News Association, supra.*

The court below has in effect told employers and unions that they must submit all contract disputes which arguably involve unfair labor practices to the NLRB. The NLRB, under its *Collyer* deferral doctrine, will not entertain the dispute either where the parties have agreed on a mandatory grievance-arbitration process in their collective bargaining agreement. *E.g. Laborers Local 423 and V&C Brickcleaning Co., supra.* This leaves the parties in a no-man's land where self-help is the only means of recourse.

The long standing national labor policy, which favors enforcement of grievance-arbitration procedures, was most recently reaffirmed and strengthened in this Court's decision rendered in *Gateway Coal Company v. UMW,* ..... U.S. ....., 85 LRRM 2049 (Jan. 8, 1974). In *Gateway Coal Company v. UMW, supra,* the parties had expressly agreed to a detailed grievance procedure and broad arbitration clause providing for final and binding arbitration of *(inter alia)* any local trouble of any kind arising at the mine. A dispute arose between the mineworkers and Gateway concerning the adequacy of safety precautions and recordings of airflow in one of the mines. The mineworkers engaged in a work stoppage to force two foremen off the job who allegedly were not making the proper recordings of airflow in the mine. Gateway then offered to arbitrate the question as to whether the mine was rendered unsafe by the presence of the two foremen in the mine, but the union refused. When the strike continued, Gateway filed suit in the United States District Court for the Western District of Pennsylvania seeking to compel arbitration and enjoin the strike. ..... F.Supp....., 80

LRRM 2634 (W.D.Pa.1971). The District Court found that the dispute giving rise to the work stoppage was arbitrable and issued a *Boys Markets* injunction. See *Boys Markets v. Retail Clerks*, 398 U.S. 235, 74 LRRM 2257 (1970). Subsequently an impartial arbitrator ruled that the safety dispute was arbitrable and found without merit the union's claim that the mine was unsafe under the direction of the two foremen.

The United States Court of Appeals for the Third Circuit then reversed the judgment of the District Court in favor of Gateway and vacated the preliminary injunction. 466 F.2d 1157, 80 LRRM 3153 (3rd Cir. 1972). In *Gateway*, the Third Circuit Court of Appeals reasoned that public policy dictated a finding of non-arbitrability where safety disputes were allegedly governed by a general and non-specific grievance-arbitration procedure. See Section 502 of the Act, 29 USC §143. On certiorari review, this Court reversed the decision of the Third Circuit and upheld the power of the District Court to enjoin the strike. In *Gateway*, this Court again reaffirmed and strengthened the national labor policy which recognizes that grievance-arbitration machinery is *the* key to industrial peace. The Court reasoned that a good faith belief, unsupported by objective evidence of an emergency, that a grievance involves a safety dispute will not preclude the issuance of a no-strike injunction. Although the collective bargaining agreement in *Gateway* contained no express agreement prohibiting work stoppages, a no-strike promise was implied because of the existence of final and binding contract arbitration machinery. *Accord, Teamsters Local 174 v. Lucas Flour, supra.*

Unlike the grievance dispute underlying the strike in *Gateway*, the work assignment dispute between the parties in the

case at bar does not even involve an alleged threat to the safety of the Carpenters Union members. Furthermore, the work assignment dispute here was not merely "arguably arbitrable"[8] it was *expressly* subject to mandatory grievance-arbitration procedures *and* an express promise not to strike. There are thus even more compelling circumstances in the case at bar for upholding the state trial court's Temporary Restraining Order which enjoined the union's illegal work stoppage. If "safety grievances" are not *sui generis* and *are* subject to compulsory arbitration *without* strike, then work assignment disputes must logically come under the arguably arbitrable umbrella of national labor policy.

C. INJUNCTIVE RELIEF IS ABSOLUTELY NECESSARY FOR THE ENFORCEMENT OF NO-STRIKE PROMISES.

In *Boys Markets, Inc. v. Retail Clerks, supra,* this Court recognized the vital importance of the injunction as a tool to enforce no-strike promises. In *Boys Markets,* a dispute arose between the members of the Retail Clerks Union and some non-union employees working for Boys Markets. The dispute in that case involved a work assignment controversy between members of the Retail Clerks Union and non-union employees who were employed by Boys Markets. In order to force a resolution of that dispute, the Retail Clerks Union went on strike. At the time of the strike, the union and the employer were operating under a collective bargaining agreement which contained an express no-strike pledge. In overruling the Court's prior decision in *Sinclair Refining Co. v.*

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8. See *United Steelworkers of America v. Warrior & Gulf Navigation Co., supra,* where the Court first articulated the "arguably arbitrable" doctrine - doubts should be resolved in favor of finding that a particular dispute is arbitrable.

Atkinson, 370 U.S. 195, 50 LRRM 2420 (1962), the Court in *Boys Markets* upheld the power of a federal district court to issue an injunction against the strike. The Court also pointed out that injunctive relief to enforce a no-strike obligation should be available in *both* state and federal courts. 398 U.S. at p. 246.

The court below has ruled that state court injunctive relief will not be available to either employers or unions whenever the breach sought to be enjoined arguably involves an unfair labor practice.9/ This decision will provide a gaping loophole for evading collective bargaining promises. Employers faced with wildcat strikes over any issue denominated as either a "jurisdictional dispute" or a dispute which "arguably involves an unfair labor practice," must either capitulate or risk an indefinite shutdown and eventual economic ruin.

Freedom to negotiate the substantive terms of collective bargaining agreements entails correlative responsibility on the part of both employers and unions to live up to their contract commitments. The potential deterrent of injunctive relief will insure that collective bargaining responsibilities are met. The Supreme Court of Florida's decision is premised on the erroneous notion that industrial strife should continue until such time as the NLRB initially determines whether it will exercise jurisdiction over a work assignment dispute or decline such jurisdiction. Contrary to the court below, the NLRB has consistently ruled that it will defer its concurrent jurisdiction in favor of the parties' agreed-upon arbitration process. *E.g. Collyer Insulated Wire, supra.* See 279 So.2d

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9. It is highly probable that every breach of a collective bargaining agreement may "arguably involve an unfair practice." See §§8 (a)(5), 8(b)(3), 8(d) of the Act; *Collyer Insulated Wire, supra.*

at 303; P.App.14a. Rather than promoting the expeditious and peaceful settlement of industrial controversies, the decision of the Florida Supreme Court will only add fuel to the fire of potential industrial strife.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Decision and Order of the Supreme Court of Florida be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the Brief for the Petitioner have been furnished by United States first class mail on this 24th day of January, 1974, to the following:

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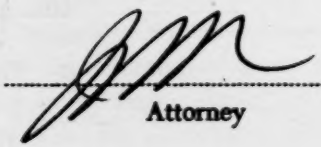

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